30-32

Nos. ~~703-706~~

In the Supreme Court of the United States

OCTOBER TERM, 1940

DANIEL D. GLASSER, PETITIONER

v.

UNITED STATES OF AMERICA

NORTON I. KRETSKE, PETITIONER

v.

UNITED STATES OF AMERICA

ALFRED E. ROTH, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITIONS FOR WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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OPINION BELOW

The opinion of the Circuit Court of Appeals (R. 1117–1139) is reported in 116 F. (2d) 690.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered December 13, 1940 (R. 1139–1140), and petitions for rehearing (R. 1141–1208) were denied January 23, 1941 (R. 1239). The petitions for writs of certiorari were filed February 28, 1941. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925. See also Rule XI of the Rules of Practice and Procedure in Criminal Cases promulgated by this Court May 7, 1934.

QUESTIONS PRESENTED

1. Whether the record fails to disclose that the indictment was returned in open court by the grand jury.

2. Whether the trial court erred in overruling petitioners' motion to quash the indictment on the ground that the grand jury was illegally constituted because of the exclusion of women therefrom.

3. Whether the trial court abused its discretion in denying petitioners' motion for a new trial based on the alleged improper method of selecting prospective petit jurors.

4. Whether petitioner Glasser was deprived of his right to the effective assistance of counsel.

5. Whether the second count of the indictment sufficiently charged a conspiracy to defraud the United States.

6. Whether Government Exhibits 81A and 113 were properly admitted in evidence.

7. Whether the conduct of the trial judge was such as to deprive petitioners of their right to a fair and impartial trial.

8. Whether the prosecutor was guilty of prejudicial misconduct.

9. Whether there was sufficient evidence to warrant the submission of the question of the guilt of petitioners Glasser and Roth to the jury.

STATEMENT

On September 29, 1939, an indictment in two counts was returned against the petitioners and two others [1] in the District Court for the Northern District of Illinois. The first count is not here involved since it was dismissed at the close of the Government's case upon its election to proceed on the second count (R. 100). The second count (R. 22–37), after alleging that during certain periods the defendants Glasser and Kretske were assistant United States attorneys for the Northern District of Illinois, employed to prosecute in that district all delinquents for crimes and offenses cognizable under the authority of the United States, particularly violations of the federal internal revenue laws relating to liquor, charged in substance that the defendants conspired to defraud the

[1] The two codefendants, Anthony Horton and Louis Kaplan, were convicted (R. 101, 1045) but did not appeal.

United States of its right to be honestly, faithfully, and dutifully represented in such matters in the courts of the United States by an assistant United States attorney free from corruption, improper influence, dishonesty, or fraud. The count alleged broadly that the conspiracy was to be accomplished by the soliciting of moneys from certain persons charged with violating or about to be charged with violating the federal liquor laws, which moneys were to be used to influence and corrupt the defendants Glasser and Kretske in the performance of their official duties.

Petitioners were convicted (R. 101, 1045) and were sentenced as follows: Glasser and Kretske to imprisonment for a period of 14 months and Roth to pay a fine of $500 (R. 104). On appeal to the Circuit Court of Appeals for the Seventh Circuit the petitioners' convictions were unanimously affirmed (R. 1117–1140).

The extensive summary of the Government's evidence contained in the opinion in the Circuit Court of Appeals (R. 1122–1129) renders it unnecessary to do more than briefly outline, with appropriate record references for the convenience of the Court, the *modus operandi* of the conspiracy and the parts played therein by the defendants. While the petitioner Kretske concedes that there was sufficient evidence to have made out a case for the jury against him (Pet. 3), the evidence respecting the part played by Kretske in the conspiracy is

necessarily included in the following summary, since he was a pivotal figure.

Petitioner Glasser was the Assistant United States Attorney in charge of liquor cases (R. 914, 917) in the office of the United States Attorney for the Northern District of Illinois from shortly after March 1935 (R. 911) until April 1939 (R. 912). Petitioner Kretske was also an Assistant United States Attorney in that office from October 1934 (R. 802) until April 1937 (R. 801) and assisted Glasser in the prosecution of liquor cases (R. 190, 801). After his resignation from office, Kretske practiced law in Chicago (R. 753, 803). Petitioner Roth was an attorney in private practice (R. 833) to whom Kretske referred various persons who were charged with violations of the liquor laws and whose cases were involved in the instant conspiracy (R. 835, 861, 872, 875, 878). The defendant Horton was a bondsman who conducted his business in the Federal Building in Chicago where the office of the United States Attorney is located (R. 750, 765). The defendant Kaplan was engaged generally in the illicit alcohol business in and around Chicago and was a large-scale operator of illicit stills in that vicinity. (R. 452, 453, 460, 463, 467, 473, 530; Ex. 113, R. 532; Ex. 81, R. 533).

Kaplan frequently informed his associates that he had protection through the "Federal Building" and that he paid out money for this purpose (R.

452, 454). One of Kaplan's men, by following Kaplan and by questioning him, ascertained that Kaplan was periodically contacting Kretske and Glasser (R. 455, 457, 462). Upon the seizure of two stills operated by Kaplan and his associates (R. 458, 538), Kaplan collected money from his partners for the purpose of "fixing" the cases, telling them not to worry about anything (R. 457–460, 465); that after the Alcohol Tax Unit investigators had done their work, the cases were out of their hands (R. 460, 466). These alcohol violations were brought to Glasser's attention by means of the investigator's reports (R. 529–530; Ex. 81, R. 529; Ex. 113, R. 532) and by many conferences and discussions (R. 444–452, 529–530, 532). Glasser was satisfied with the available evidence against Kaplan (R. 530). In one of these cases "no bills" were returned by the grand jury as to the three most important of the accused, including Kaplan (R. 530), the case having been presented to and withdrawn from three prior grand juries by Glasser (R. 528–531), and in the other case "no bills" were returned as to all the accused (R. 528). Available evidence was not used by Glasser upon these presentations (R. 530–533, 536–537, 590, 602). One of the accused paid $100 to Kretske for a "no bill" immediately prior to such action by the grand jury (R. 542). The members of the grand jury followed Glasser's advice as to who should and who should not be indicted (R. 589). The presen-

tation of one of these cases was, in the opinion of the grand jurors, so unsatisfactory that they requested its re-presentation (R. 589–591, 604–606).

A third still operated by the same group was seized November 17, 1937 (R. 468–469, 541), and money was shortly thereafter paid by one of the group to Kretske to "fix" the case on Kretske's assurance that its disposition would be the same as in the two previous cases (R. 470, 542). A year later, November 1, 1938, an indictment was returned and Kretske was shortly thereafter paid money by two others of the group on the understanding that they would not go to jail (R. 543–545) and that Kretske would furnish a lawyer and take care of Glasser (R. 543). Petitioner Roth acted as the attorney and the case was continued (R. 546–547). Kretske shortly thereafter, and at about the time when Glasser resigned from office, said that he could do nothing in the case as "they had taken the alcohol cases away from his friend" (R. 547). The indicted defendants were subsequently convicted by Glasser's successor in office (R. 473, 547). Glasser sought and secured a written statement from an attorney who withdrew from the case to the effect that this attorney had not done so because of any belief that the case had been "fixed" (R. 618; Ex. 128, R. 619).

The many other cases involved in the conspiracy present a comparable picture.

Kretske and Horton solicited money for the fixing of many cases and in most instances re-

ceived it (R. 225–231, 241, 244, 262, 297–300, 305–307, 370, 413, 420, 469–472, 499, 542–550, 652). In one case where the money was not forthcoming when solicited the person solicited was shortly thereafter indicted (R. 300). In another case, because of exceptional circumstances, Kretske, after discussing the case with Glasser, refused to accept the money (R. 305).

Upon the receipt of payments prosecutive action would generally cease (R. 194–196, 226, 232, 258, 261, 267, 268, 270, 271, 276, 346, 522, 663), the matter would be stricken from the docket (R. 236, 350), or the accused would be discharged (R. 289, 297, 370, 414). Money paid for similar purposes, through persons not indicted, accomplished similar results (R. 307–310). In many of these cases Kretske arranged for Roth to act as the attorney for the defendants (R. 228, 230, 273, 302, 345, 546, 835, 861, 872, 874, 875, 878). Persons paying for these favors were invariably advised not to worry, that everything would be taken care of (R. 230, 369–373, 460–461, 458, 463, 465, 620, 621), and Glasser was known during the negotiation of these transactions to be the person whose conduct was to be influenced (R. 230, 297, 301, 304, 306, 543, 547, 631, 668, 670).

There was evidence from which the jury could find that the disposition of these cases was the direct result of some act or failure to act on the part of Glasser (R. 194–195, 220, 232, 250–251,

289, 297, 309, 310, 365, 371, 413–414, 464–465, 528–529, 530–533, 589–591, 602, 633, 663, 668, 706–711).

The record discloses many instances of Glasser's failure to utilize available information and evidence in securing indictments and in otherwise prosecuting cases (Ex. 74, R. 406–408; Ex. 120, R. 585–587, 528–533, 602, 609, 589–590, 451–452, 536–537; Ex. 160, R. 706–711, 250, 441–443, 218–224, 883, 199, 204, 209, 386).

In one case the evidence disclosed that the prosecution by Glasser was the result of constant prodding by an Alcohol Tax Unit investigator and that Glasser was doing what he could to hinder a successful prosecution (R. 300–304, 706–711).

There is direct evidence of Glasser's extra-official association and cooperation with Kaplan and with other large scale violators who, upon payment of money to Kretske, Horton or to one Miller, were successful in avoiding prosecution (R. 302, 304, 457, 462, 563, 709–711).

In one instance information concerning a liquor violation in which one Nick Abosketes was involved was disclosed confidentially in Glasser's office (R. 649). Shortly thereafter one Brantman, who had known Kretske many years (R. 650), solicited, on Kretske's behalf, $3,000 from Abosketes to stop Abosketes' indictment (R. 664–673, Ex. 134, R. 666). This money was later turned over to Kretske by Brantman (R. 652). Abosketes was later informed by Brantman that "everything was

under control" (R. 670) and he was never indicted (R. 663, 666).

In attempting to bribe the United States District Attorney for the Northern District of Indiana so as to prevent the return of a certain indictment (R. 680–682), Roth stated, "Well, that is the way we handle cases in Chicago sometimes" (R. 682).

There was evidence that Kretske and Roth attempted to prevent the investigation leading to the indictment in the instant case (R. 685).

ARGUMENT

I

Petitioners contend (Glasser, pp. 15–19; Kretske, pp. 13, 20; Roth, pp. 26–28) that the record fails to disclose that the indictment was returned in open court by the grand jury and that, hence, the District Court erred in overruling their motion to quash made on that ground (R. 42, 141–149, 151). We submit that the Circuit Court of Appeals correctly held this contention to be without merit (R. 1118–1119).

The *placita* (R. 1) discloses the convening of the District Court for the Northern District of Illinois, Eastern Division "on the first Monday of September [1939] (it being the twenty-ninth day of September the indictment was filed)," and recites the presence of the various judges of the court, including District Judge Stone, who sat as a member of the court by designation and who tried the instant case, the marshal, and the clerk.

On the face of the indictment in the clerk's own handwriting (see R. 1119) appears the statement "Filed in open court this 29th day of Sept., A. D. 1939, Hoyt King, Clerk," preceded by the notation "A true bill, George A. Hancock, Foreman" (R. 38). These records, which, of course, import verity, sufficiently disclose, in our opinion, that the indictment was returned by the grand jury in open court.

It will be noted that in contrast with the clerk's entry "filed" in *Renigar* v. *United States*, 172 Fed. 646, 647 (C. C. A. 4th), cited by petitioners, the entry of the clerk in the instant case was "Filed in open court." Obviously, if the indictment had not been returned in the usual manner but had merely been handed by the foreman of the grand jury to the clerk, the clerk's entry would simply have been that the indictment was "filed," as in the *Renigar* case. There is no proof in the present record that the indictment was not returned in open court.[2]

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[2] While it was stated in *Ledbetter* v. *United States*, 108 Fed. 52 (C. C. A. 5th), that an entry by the clerk on the indictment "filed in open court" was not sufficient to identify the indictment as properly returned to the court by the grand jury, the issue was complicated by the fact that the indictment was captioned "Circuit Court" rather than the district court; and it was essential that the indictment have been returned in the district court. Moreover, the Circuit Court of Appeals held that the formal defect was immaterial since the bill of exceptions showed that the indictment had in fact been returned in the District Court and the "oversights and

In addition, immediately after the above notation that the indictment had been filed in open court there appears the following (R. 38–39):

> on the 29th day of September A. D. 1939, being one of the days of the regular September term of said Court, in the record of proceedings thereof, in said entitled cause,[3] before the Honorable James H. Wilkerson District Judge appears the following entry, to wit:
>
> UNITED STATES DISTRICT COURT,
> Northern District of Illinois.
> (Date) Sept. 29, 39.
>
> Cause No. ----------
> Title of Cause----------
> Df. Ex. 1
> 11/7/39.
> Brief Statement of Motion
> The Grand Jury return 4 Indictments in open Court. Added 10/30/39
> Name of moving Counsel
> Representing
> Order discharging Grand Jury of Sept. Term 1939.
> Name of opposing Counsel (if any)
> JHW
> Hand this memorandum to the Clerk.

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omissions" could have been corrected by the trial court at the time this proof was made (p. 55).

In the *Renigar* case, *supra*, the opinion indicates that the grand jury did not in fact return the indictment in open court.

[3] The title and number of the present case appears at the top of R. 38.

It is evident that this notation explicitly identifies the indictment in the instant case as one of the four indictments returned by the grand jury in open court. Also, the initials "JHW", being the initials of District Judge Wilkerson, and the notation "Df. Ex. 1, 11/7/39", together with various references to a motion, lend support to the view that Judge Wilkerson ordered that the record be made to show specifically that the indictment was returned in open court by the grand jury, so that that information would be available in connection with the hearing of defendants' motion to quash which was set for November 7, 1939 (R. 140; Glasser's petition, p. 17).[4] If this entry showing the return of the indictment in open court by the grand jury was made without order of the court, as petitioner Glasser asserts (Pet. 17), that could have been easily established. There is nothing in the record to indicate that any such attempt was made.

At all events, it is certainly clear from the record that the indictment was returned by the grand jury and there is at most an imperfect disclosure that it was returned in open court, without any actual showing that it was not so returned. There is,

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[4] Petitioners made no effort to prove and do not contend that the indictment was not in fact returned in open court. Accordingly, we see no reason why the notation quoted above may not properly be regarded as a clarification of the record, *nunc pro tunc*. While the Court, in the *Ledbetter* case referred to an "order entered *nunc pro tunc*," we see no reason why a formal order should be necessary, where the facts are not in dispute.

moreover, no assertion in the motion to quash, the supporting affidavit or the petitions for writs of certiorari that petitioners were prejudiced by the alleged defect. The defect was, at most, formal and, in the absence of any showing of prejudice, objections of this character are not favored. *Cf. Breese* v. *United States,* 226 U. S. 1, 11; U. S. C., Title 18, Sec. 556.[5]

II

All of the petitioners contend, although petitioner Glasser does not at this time argue the point (Glasser, p. 8; Kretske, pp. 13, 20; Roth, pp. 31–34), that the District Court erred in denying their motion to quash the indictment on the ground that the grand jury was illegally constituted because of the deliberate exclusion of women's names from the jury box from which the grand jurors were drawn. (R. 42, 141–151.)

Petitioners' argument, the substance of which is apparently embodied in Roth's petition, is that under the laws of the State of Illinois, effective prior to the summoning of the grand jury in the instant case,[6] it was required that the names of

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[5] This section provides, in part, that—

"No indictment found and presented by a grand jury in any district or other court of the United States shall be deemed insufficient, nor shall the trial, judgment, or other proceeding thereon be affected by reason of any defect or imperfection in matter of form only, which shall not tend to the prejudice of the defendant, * * *."

[6] The grand jury was summoned on August 25, 1939 (R. 144–145, 148, 1118). On May 12, 1939, there were approved

women be placed on jury lists throughout the State, and that the jury commissioner and the court clerk, by virtue of U. S. C., Title 28, Sec. 411,[7] should have heeded this requirement when making up the grand jury list.

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two amendatory acts of the legislature of Illinois. One, Section 1 of Chapter 78 of the Illinois Revised Statutes, 1939, applies to counties not having jury commissioners (see Illinois Revised Statutes, Chapter 78, Section 2), and provides that "The county board of each county shall, at or before the time of its meeting, in September, in each year, or at any time thereafter, when necessary for the purpose of this Act, make a list of sufficient number, not less than one-tenth of the legal voters of each sex of each town or precinct of the county, giving the place of residence of each name on the list, to be known as the jury list." The other, Section 25 of Chapter 78 of the Illinois Revised Statutes, 1939, applies to counties having jury commissioners (see Illinois Revised Statutes, 1939, Ch. 78, Sec. 24) and provides, in part, that "The said commissioners upon entering upon the duties of their office, and every four years thereafter, shall prepare a list of all electors of each sex between the ages of 21 and 65 years, possessing the necessary legal qualifications for jury duty, to be known as the jury list."

These amendatory acts became effective July 1, 1939 (Article IV, Section 12, Illinois Constitution). On August 8, 1939, the Supreme Court of Illinois upheld the constitutionality of Section 25 of Chapter 78. *People* v. *Traeger*, 372 Ill. 11.

[7] This section provides—

"Jurors to serve in the courts of the United States, in each State respectively, shall have the same qualifications * * * and be entitled to the same exemptions, as jurors of the highest court of law in such State may have and be entitled to at the time when such jurors for service in the courts of the United States are summoned."

In disposing of the petitioners' contention, the Circuit Court of Appeals stated (R. 1118) that "The Northern District of Illinois [in which the indictment was returned] is composed of 18 counties of the State of Illinois. Under the Act in question the county boards of 17 of these counties were privileged to wait until September 1, 1939 befor including women on the jury lists." [8]

It is contended, however, that the Circuit Court of Appeals erroneously construed Section 1 of Chapter 78 of the Illinois Revised Statutes because the language of that section compels the conclusion that the county boards were required to act before September to make effective the then existing law. In so contending emphasis is placed on the words "when necessary for the purpose of this Act." It is obvious, however, that this language was utilized in order to permit the county boards not only to make up the jury lists at or before the time of their September meeting, but also to allow them to make up such lists "at any time thereafter" when neces-

[8] It was conceded by the Government in its brief in the Circuit Court of Appeals that "it was the law in Cook County that Jury Commissioners should place women on jury lists on and after July 1, 1939" (p. 18), but it is evident from the defendants' affidavit in support of their motion to quash that 11 of the grand jurors were drawn from counties in the Northern District of Illinois other than Cook County (R. 144–145; see U. S. C., Supp. V, Title 28, Sec. 152). Of course the court clerk and jury commissioner were entitled to draw the grand jury from the entire District. *Marvel* v. *Zerbst*, 83 F. (2d) 974 (C. C. A. 10th).

sary for the purpose of the Act (Footnote 6, *supra*, p. 14.)

It is also argued that the Federal court clerk and jury commissioner were not controlled by the State law fixing the meeting time of the county board as of September. The clerk and the jury commissioner were, however, commanded by U. S. C., Title 28, Sec. 411 (Footnote 7, *supra*, p. 15) to place upon jury lists only those who were at the time they were summoned eligible for jury service in the highest court of law in the State for which jurors were selected. Section 1 of Chapter 78, although effective on July 1st, prior to the summoning of the grand jury in the instant case, does not purport to make women immediately eligible for such service, but only when their names were placed on the jury list by the county boards, and the boards were privileged to defer their action until their September meeting. In order for the petitioners to prevail it was, under U. S. C., Title 28, Sec. 411, at least necessary for them to have shown that in the 17 counties in the Northern District of Illinois utilizing county boards in the preparation of jury lists, those boards had, prior to the summoning of the grand jury in the instant case, placed women on their jury lists. The record contains no such showing.

In any event, as the Circuit Court of Appeals stated (R. 1118), there was no allegation in the motion to quash or supporting affidavit that petitioners were in any wise prejudiced by the selection

of grand jurors or that any one of them was incompetent or disqualified. As this Court said in *United States* v. *Gale,* 109 U. S. 65, 70, "It is not complained that the [grand] jury actually empanelled was not a good one; but that other persons equally good had a right to be placed on it." The rule is well settled that a defendant has no cause of complaint because of alleged irregularity in drawing a grand jury which did not prejudice him. *Agnew* v. *United States,* 165 U. S. 36, 44.[9] The burden is upon him to show by the averment of specific facts that he was prejudiced. *Brookman* v. *United States,* 8 F. (2d) 803, 806 (C. C. A. 8th). The burden was not met in the instant case, and the motion to quash was properly overruled.[10]

III

The petitioners also contend that reversible error resulted from the overruling of their motion for a new trial made on the ground that all the names of women which were placed in the box from which the petit jurors were selected were presented to

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[9] See also *United States* v. *Parker,* 103 F. (2d) 857, 859 (C. C. A. 3d), certiorari denied, 307 U. S. 642; *Walker* v. *United States,* 93 F. (2d) 383, 391 (C. C. A. 8th), certiorari denied, 303 U. S. 644; *Morrison* v. *United States,* 71 F. (2d) 358, 359 (C. C. A. 5th), certiorari denied, 293 U. S. 589; *Moffatt* v. *United States,* 232 Fed. 522, 528 (C. C. A. 8th); *Stockslager* v. *United States,* 116 Fed. 590, 596 (C. C. A. 9th).

[10] There was here, of course, no systematic and prejudicial exclusion of persons of the defendant's class, eligible for jury service, as in several of the cases cited by petitioner Kretske (Pet. 13).

the clerk of the District Court by the Illinois League of Women Voters; that all the women whose names were presented by the League had attended jury classes maintained for the purpose of instructing prospective jurors; that the lectures given to such classes represented the views of the prosecution; that the names of women otherwise qualified and eligible for jury service were deliberately excluded from the jury box; that they were thereby deprived of trial by a fair and impartial jury and denied due process of law; and that knowledge of the exclusion as jurors of women other than those recommended by the Illinois League of Women Voters was first acquired after verdict (Glasser, pp. 12, 13, 15; Kretske, p. 14; Roth, pp. 12–14).[11] Petitioner Glasser also urges that the court clerk and jury commissioner unlawfully delegated to the Illinois League of Women Voters their statutory duty under U. S. C., Title 28, Sec. 412,[12] since the names of all the women

[11] It does not appear that petitioner Kretske sought a new trial on this ground. The only affidavits appearing in the record which raised the question are those of petitioners Glasser and Roth (R. 1049–1057).

[12] This statute provides—

"All such jurors, grand and petit, including those summoned during the session of the court, shall be publicly drawn from a box containing, at the time of each drawing, the names of not less than three hundred persons, possessing the qualifications prescribed in the section last preceding, which names shall have been placed therein by the clerk of such court, or a duly qualified deputy clerk, and a commissioner, to be appointed by the judge thereof, or by the judge

placed in the jury box were those presented to them by this League. We submit that these contentions are without merit.

Preliminarily it should be pointed out that the record merely contains a notation by the trial court, in denying the defendants' motion for a new trial, apparently orally made, granting petitioners Glasser and Roth leave to file certain affidavits (R. 103). It is upon the allegations in two of these affidavits that petitioners' present contentions are predicated (R. 1049–1057). However, petitioners have failed by their bill of exceptions to disclose what transpired at the hearing on their motion for a new trial. There is, therefore, nothing to show the factual situation presented to the trial court or the grounds upon which that court may have predicated its decision. For aught that is known, women other than those recommended by the Illinois League of Women Voters may have been placed in the jury box. Indeed, the very Bar Journal article upon which petitioner Glasser re-

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senior in commission in districts having more than one judge, which commissioner shall be a citizen of good standing, residing in the district in which such court is held, and a well-known member of the principal political party in the district in which the court is held opposing that to which the clerk, or a duly qualified deputy clerk then acting, may belong, the clerk, or a duly qualified deputy clerk, and said commissioner each to place one name in said box alternately, without reference to party affiliations until the whole number required shall be placed therein."

lied in the trial court shows that at least one non-member of the League was summoned (R. 1052). Moreover, so far as we know, the motion may have been denied because the facts disclosed that the defendants' objection was not made at the first opportunity.

In any event the petitioners' complaint was first raised on motion for a new trial. The disposition of such a motion is, of course, committed to the sound discretion of the trial court and its action may not be reversed unless there has been an abuse of discretion. Petitioners make no showing that such discretion was abused in the present case.

With respect to those whose names are placed in the jury box from which are selected grand and petit jurors, the statute governing the drawing of jurors places only two specific limitations upon the court clerk and the jury commissioner. They may put in the box only the names of qualified persons and must place therein the names of at least three hundred such persons. While, of course, no organization or group may be allowed to dictate to them what names should be placed in the box and they may not systematically exclude any qualified class, the purpose of the statute is, as was stated in *United States* v. *McClure*, 4 F. Supp. 668, 671 (E. D. Pa.), "to provide for the highest type of jurymen in the federal courts and to insure their selection without any risk of bias, prejudice, local feeling, or unfitness of any kind." There is thus

reposed in the court clerk and the jury commissioner much discretion in the fulfilling of the duties and responsibilities imposed upon them by the law, and the decisions indicate that so long as they do not abrogate their functions they are permitted, to promote the purposes of the statute, to exercise a reasonable degree of selectivity in the determination of those whose names are placed in the box for jury service and that they may predicate their action upon advice and information obtained from appropriate sources. *Walker* v. *United States,* 93 F. (2d) 383, 390–391 (C. C. A. 8th), certiorari denied, 303 U. S. 644; *Wilson* v. *United States,* 104 F. (2d) 81, 82, (C. C. A. 5th), certiorari denied, 308 U. S. 574; *United States* v. *McClure, supra.*

In the affidavits filed by petitioners Glasser and Roth in the trial court there is nothing to show that the Illinois League of Women Voters were attempting to dictate that only the names of those selected by that League should go into the jury box. These affidavits stated only that the women's names placed in the jury box were taken from a list prepared and presented to the clerk by the League. There was no allegation in these affidavits that any of these women did not possess the necessary qualifications, and the only objection which petitioners raise to their qualifications is the assertion in Glasser's affidavit that in the classes of the League which they had attended the lecturers had presented "the views of the prosecution" (R.

1050), an assertion which finds no support in the Bar Journal article upon which his attack was predicated (R. 1052–1057) and an assertion, moreover, which cannot be adequately appraised in view of the absence from the record of what transpired at the hearing on the motion for a new trial. It is, moreover, of significance that neither below nor here is it asserted that any women who attended the jury classes of the Illinois League of Women Voters served on the jury which tried and convicted the petitioners. Under the circumstances we submit that there has been no showing that the trial court abused its discretion in denying the motion for a new trial.

IV

Petitioners Glasser (pp. 8–12) and Roth (pp. 30–31) contend that the former was deprived by the trial court of his right to the effective assistance of counsel [13] because Glasser's attorney, Stewart, was assigned by the trial court to represent Kretske when it developed that the latter's counsel was engaged in a State court trial. However, the contention is meritless.[14]

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[13] It is difficult to perceive how Roth is in any position to urge this point since he was represented throughout the trial by his own attorney (R. 96, 186), and thus could hardly have been affected by any alleged lack of the effective representation of Glasser.

[14] For the circumstances which resulted in the appointment of Stewart to represent Kretske, see R. 41, 95–97, 173–185.

Outside of Glasser's mere general statement that Stewart's joint representation of him and Kretske resulted in the failure to cross-examine and to make objections that would have been advantageous to Glasser but probably detrimental to Kretske, Glasser gives only one example, in a trial consuming over a month (R. 179, 1045) where any alleged injury occurred to him (pet. 10). It is apparent, however, from the example given that the witness Brantman, who had testified that he had paid $3,000 to Kretske, also stated that he did not know petitioner. There was obviously no necessity of cross-examination to elicit a fact which the witness had already stated in the direct examination.[15]

A mere thumbing of the record discloses that Stewart vigorously defended Glasser's interests at the trial by objections to Government testimony, cross-examination of Government witnesses, and direct examination of Glasser and his witnesses.[16] Indeed, Stewart, whom Glasser describes as an "eminent member of the local bar" (Pet. 9), appears to have taken the leading defense role (see e. g. R. 750).

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[15] The reason for not cross-examining Brantman on Kretske's behalf is amply indicated in the colloquy occurring at the time the sentences were imposed. (See R. 1061–1062.)

[16] See, e. g., R. 200, 209, 214, 219, 246, 250, 252, 276, 293, 303, 339, 347–348, 390, 398–399, 441, 444, 446, 534, 565, 585, 616, 716, 722, 724, 737, 743, 744, 745, 783, 784, 796, 885, 886, 890, 911, 1060, 1065.

Also, Glasser does not refer to the fact that he had another attorney, Callaghan, who filed on his behalf certain trial motions and pleadings (R. 54, 61, 65, 142), and who was present throughout the trial. This attorney objected on several occasions to Government testimony (R. 194–195, 399, 545, 624, 679–680, 703), and examined various witnesses on behalf of Glasser (R. 823–829, 831, 910, 1028).

V

Petitioners Glasser (pp. 50–51) and Roth (p. 30) contend that the indictment charged a conspiracy to commit a substantive offense which involved concerted action, i. e., to violate U. S. C., Title 18, Sec. 91,[17] relating to the bribery of Government officers, and therefore was fatally defective.

At the outset, it should be noted that there is not here involved the first count of the indictment which charged a conspiracy to violate the bribery statute. At the end of the Government's case the Government elected to proceed on count two and count one was dismissed (R. 100). It follows therefore that the only count here involved is count two.

That count did not charge a conspiracy to commit the crime defined by the bribery statute[18] but

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[17] See appendix to Glasser petition, p. 53.

[18] When the prosecutor said in his argument on the defendants' demurrer that "This indictment follows very closely the

was laid under that portion of the conspiracy statute which penalizes conspiracies "to defraud the United States in any manner or for any purpose." U. S. C., Title 18, Sec. 88. It charged that the defendants conspired to "defraud the United States of and concerning its governmental function to be honestly, faithfully and dutifully represented in the courts of the United States by * * * an Assistant United States Attorney to prosecute certain delinquents for crimes and offenses cognizable under the authority of the United States as the same should be presented and determined according to law and justice, free from corruption, improper influence, dishonesty or fraud * * *." (R. 28.) The allegations with respect to the solicitation of money to be paid to Glasser and Kretske in order to influence them in their official acts as Assistant United States Attorneys (R. 29 et seq.) were obviously but the detailing of means whereby the conspiracy was to be accomplished. The count consequently is no different from that which was before Justice Sutherland, Justice Stone, and Circuit Judge Clark in *United States* v. *Manton*, 107 F. (2d) 834 (C. C. A. 2d), certiorari denied, 309 U. S. 664, in which Mr. Justice Sutherland, in writing the opinion, said (p. 839):

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language in Section 91," (R. 154) it would appear from his other observations that he was referring to the first count of the indictment. (See R. 158.)

> It is further urged that the indictment charges, and that the government sought to prove, a conspiracy to accept and secure bribes, and that this is not an indictable conspiracy. We do not stop to inquire whether in the present case the conclusion would follow from the premises, since it is clear that the premises are not true. * * * The indictment does not charge as a substantive offense the giving or receiving of bribes; nor does it charge a conspiracy to give or accept bribes. It charges a conspiracy to obstruct justice and defraud the United States, the scheme of resorting to bribery being averred only to be a way of consummating the conspiracy and which, like the use of a gun to effect a conspiracy to murder, is purely ancillary to the substantive offense. The long argument upon the point consequently fails for lack of foundation to give it support.[19]

The Circuit Court of Appeals consequently properly held the *Manton* case to be dispositive (R. 1121–1122).

While all of the petitioners assert that the indictment was fatally defective because it was too vague and indefinite, only Roth argues the point (Glasser, p. 50, Kretske, p. 13, Roth, pp. 28–30). It will be noted that there is no contention that the

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[19] See also *Miller* v. *United States*, 24 F. (2d) 353, 358–359 (C. C. A. 2d), certiorari denied, 276 U. S. 638; *Cendagarda* v. *United States*, 64 F. (2d) 182, 184 (C. C. A. 10th).

second count of the indictment, the one here involved, did not charge the necessary elements of a conspiracy to defraud under U. S. C., Title 18, Sec. 88, and it is apparent from an examination of the count that the petitioners could not have been in doubt as to the nature of the conspiracy charged or as to the manner in which it was to be effected. The only complaint is that the count did not sufficiently particularize such details as "persons, times, places, and circumstances." These, however, were details which it was the function of a bill of particulars to supply, and the District Court directed the Government to furnish such particulars (R. 76, 160). It did so in a bill which specified in great detail the names and histories of the cases with which the conspiracy was concerned; the time, places, amount, and circumstances of each payment of money and the names of the defendants soliciting each payment; the character of the official misconduct, etc. (R. 77–89). There is no claim of any prejudice or surprise following the furnishing of this bill of particulars.

If there was any defect in the count it was a formal one which did not prejudice the petitioners and was remedied by the bill of particulars. Under U. S. C., Title 18, Sec. 556 [20] there is consequently no basis for a reversal.

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[20] See footnote 5, *supra*, p. 14.

VI

All of the petitioners contend that Government's Exhibits 81A and 113 (R. 445–452; 529; 532–533)[21] were improperly admitted in evidence (Glasser, p. 31, Kretske, pp. 44–49, Roth, p. 24). However, the trial judge twice informed the jury that these two exhibits were received in evidence only against Glasser and not against any of the other defendants (R. 533–534, 539).[22] It therefore follows that neither Roth nor Kretske is in a position to urge the point.[23]

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[21] These exhibits are not printed in the record and the petitioners have not had them transmitted to this Court.

[22] While the trial court stated that "At some further stage of the proceedings I may advise you with reference to its competency as to the other defendants * * *," (R. 534) it should be pointed out that there is nothing in the record to indicate that it was ever admitted against any other defendant than Glasser. Moreover, since the petitioners have not incorporated in their bill of exceptions the trial judge's charge to the jury, it must be assumed that the jury was properly instructed that the exhibits should be considered only against Glasser. Cf. *Hall* v. *United States*, 48 F. (2d) 66, 68 (C. C. A. 9th); *Brown* v. *United States*, 32 F. (2d) 953, 954 (App. D. C.); *Harrod* v. *United States*, 29 F. (2d) 454, 455 (App. D. C.); *Williams* v. *United States*, 20 F. (2d) 269, 270 (App. D. C.); *Johnston* v. *United States*, 154 Fed. 445, 449 (C. C. A. 9th).

[23] Petitioner Kretske asserts that the trial court permitted these Exhibits to be read to the jury as evidence against the defendant Kaplan and held that it was for the jury to determine if they were evidence against anyone else (Pet. 18, 44). The record clearly shows that they were admitted only as against Glasser (R. 534, 539). Kaplan did not appeal his conviction (R. 1117).

As against Glasser, the exhibits were unquestionably competent evidence.

While Exhibits 81A and 113 are not printed in the record and the petitioners have not had them forwarded to this court, it would appear that they are the reports of Alcohol Tax Unit investigators relative to the seizure of stills on Western Avenue, Chicago, and in Spring Grove, Illinois, and detailed information which the agents had uncovered with respect to the parts played by the prospective defendants, their personal history, etc. (R. 445–451, 532–533, 1080–1081, 1131–1132; Kretske's petition, pp. 44–47). These reports were turned over to the United States Attorney's office by the Alcohol Tax Unit (R. 451–452, 532) and involved two of the cases in which, it was the Government's position, the official decisions and actions of Glasser were influenced pursuant to the conspiracy charged in the indictment. (See, e. g., bill of particulars, R. 82, and opinion below, R. 1125–1126; 1131–1132.) In these two cases, although the reports implicated certain individuals, a "No bill" was returned against them (R. 1125–1126). These reports were of course not offered for the purpose of proving the commission of the liquor violations therein described, but to show what Glasser had before him when he acted in these cases. As the Circuit Court of Appeals said "The information contained in the reports together with Glasser's conduct in these cases threw light upon the question whether the

United States was being deprived of the honest and conscientious services of an assistant United States Attorney" (R. 1132). Also, in the light of these reports the jury was better able to appraise any attempted explanation by Glasser of his conduct of the cases and of the failure of the grand jury to indict certain of those named in the reports. The reports were consequently clearly competent.

Cook v. *United States*, 138 U. S. 157, is not in point. In that case the jury was permitted, under an instruction of the trial court, to consider a report of a murder made by the Attorney General of a state to the Governor as substantive evidence upon the question of whether the defendants had committed the murder.

VII

Petitioners contend that the trial judge failed to maintain an attitude of impartiality, and assert that he undertook the function of a prosecutor by examining petitioners and their witnesses in a hostile manner, restricted petitioners' right of cross-examination, and made remarks prejudicial to them. They also assert that the judge undertook the role of a witness by making certain statements relative to criminal cases in Wisconsin against one Nick Abosketes (Glasser, pp. 24–31; Kretske, pp. 20–38; Roth, pp. 14–23).

In the first place, it is well settled that federal judges have the right, in the interest of eliciting

the truth, to interrogate both parties and witnesses in a criminal case,[24] and the extent of their participation in such interrogation is a matter within their sound discretion. *United States* v. *Kay,* 101 F. (2d) 270, 272 (C. C. A. 2d), certiorari denied, 306 U. S. 660. Similarly, the scope and extent of cross-examination is within the discretion of the trial judge (*Dist. of Columbia* v. *Clawans,* 300 U. S. 617, 632; *Alford* v. *United States,* 282 U. S. 687, 694; *Blitz* v. *United States,* 153 U. S. 308, 312), and not subject to review in the absence of abuse. Cf. *Rea* v. *Missouri,* 17 Wall. 532, 542.

Petitioners have selected from the voluminous record many piecemeal excerpts, showing statements made and questions asked by the trial court. Obviously, divorced from its context, it may not be possible to discern the propriety of each incident. And it should be noted that in the majority of the many instances cited by petitioners as examples of alleged improper statements and interrogations by the court, no objection was taken. (See, e. g., R. 196, 232, 243, 273–274, 297, 307–310, 346, 348–349, 602, 615, 625, 627–628, 644–646, 816–817, 850–851, 941, 943, 990–991, 1000–1002.)

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[24] *United States* v. *Gross,* 103 F. (2d) 11, 13 (C. C. A. 7th); *United States* v. *Breen,* 96 F. (2d) 782, 784 (C. C. A. 2d); *Hargrove* v. *United States,* 25 F. (2d) 258, 259 (C. C. A. 8th); *Kettenbach* v. *United States,* 202 Fed. 377, 385 (C. C. A. 9th); certiorari denied 229 U. S. 613.

There is clearly no merit to the principal complaints. The court's statements that two indictments were returned in Wisconsin against Abosketes [25] and that he pleaded guilty and was sentenced on one of them were not improper. Not only was no objection taken to the remarks but, on the contrary, there was acquiescence in them, Glasser's counsel stating that "We will accept your Honor's credibility" (R. 1030). Further, Abosketes, who was a Government witness, had previously testified that he had been convicted on a liquor law indictment in Wisconsin before the same judge who presided in the instant case (R. 663, 671–672).

Nor did the trial court improperly interrupt the direct examination of defense witness Judge Igoe, formerly United States Attorney and Glasser's superior. The record shows that Glasser had been endeavoring to establish that Exhibit 160, an Alcohol Tax Unit report, was the identical report which he had discussed with Judge Igoe and that the latter, after reviewing it, approved Glasser's decision to prosecute a number of the defendants named therein for substantive offenses under the internal revenue laws and not for conspiracy, as

[25] The Government's testimony had shown that Abosketes was connected with the operation of an illicit still in the Northern District of Illinois, that this had been reported to Glasser by the Alcohol Tax Unit, and that after the payment by Abosketes of $3,000 to one Brantman, who turned it over to Kretske, nothing further happened so far as Abosketes was concerned (R. 647–649, 650–662, 664–673).

recommended in the report. The agent who had prepared the report, however, had previously testified that he attended the conference. between Glasser and Judge Igoe regarding the case in question and that the report was not submitted to the United States Attorney's office until after such conference. (See R. 707.) Because of this testimony the court indicated that it was his impression that Judge Igoe had not examined Exhibit 160 when he discussed the case with Glasser and in order to verify this impression he interrupted the former's direct examination to ask the agent, who was in the courtroom, whether the report was completed at the time of the conference. The agent replied in the negative. (R. 901–903.) Obviously, the court was merely trying to refresh Judge Igoe's recollection. Moreover, Judge Igoe subsequently testified that he saw the report later on and was not in favor of handling the case as a conspiracy case (R. 903).

With respect to the court's ruling that the cross-examination of former United States Attorney William J. Campbell must be limited to the scope of his direct examination,[26] it need only be said that such is the established rule of practice in the federal courts. *Wills* v. *Russel,* 100 U. S. 621, 625; *Houghton* v. *Jones,* 1 Wall. 702, 706; *Philadelphia*

[26] This consisted merely of a denial that on the day the indictment was returned he informed Glasser that he "wanted to tell the grand jury that there was nothing in your official conduct that would require investigation" (R. 1041).

and Trenton Railroad Co. v. *Stimpson,* 14 Pet. 448, 460. Moreover, no objection was made to the ruling; Glasser's counsel merely stated that if he was so limited there would be no cross-examination (R. 1042).

Glasser also complains (Pet. 30–31) that the trial judge refused to permit him to introduce in evidence a report of the April, 1937, grand jury, while on the other hand he allowed the Government to introduce two Alcohol Tax Unit reports, Exhibits 81A and 113. However, it is plain that the grand jury report (R. 789–795) was merely a criticism of the investigation by the Alcohol Tax Unit of liquor law violations in general, from which nobody could ascertain what particular case or cases the grand jury had in mind; while the two Exhibits pertained to particular cases where Glasser's official actions were allegedly influenced pursuant to the conspiracy charged in the indictment (see *supra,* pp. 30–31). Clearly, the trial court was correct in holding that the grand jury report was not competent evidence (R. 795).[27]

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[27] Kretske's petition contains two lengthy quotations from the record of examination of Glasser by the court, which examination, he claims, was improper (Pet. 34–38). But aside from the fact that Glasser did not object in either instance and the interrogation did not in anywise relate to Kretske, it was not improper. The questions concerning Glasser's education were put to test the veracity of certain statements made in Exhibit 209, a personnel record of Glasser, typed by his stenographer from information supplied by Glasser

The Circuit Court of Appeals, with reference to petitioners' criticism of the trial court, said that "We have examined every criticism made, considered them in connection with the entire record and are satisfied that the complaints are of minor importance. They did not affect the substantial rights of the appellants, nor prevent the jury from exercising an impartial judgment on the merits." (R. 1138.) There is consequently no basis for a claim of reversible error. U. S. C., Title 28, Sec. 391.[28] See also *Goldstein* v. *United States,* 63 F. (2d) 609–613 (C. C. A. 8th).

VIII

Petitioners further contend that the prosecuting attorney overstepped the bounds of proper conduct, with the result that they were deprived of their right to a fair and impartial trial. It does not appear, however, that any of their principal grounds of complaint, which are apparently those discussed

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and prepared about a month before his resignation from the United States Attorney's office (R. 990–991). Those dealing with the libel case against a Chrysler sedan (R. 1000–1002) were pertinent because that was one of the cases involved in the conspiracy. (See R. 1123.)

[28] This statute provides: " * * * On the hearing of any appeal, certiorari, or motion for a new trial, in any case, civil or criminal, the court shall give judgment after an examination of the entire record before the court, without regard to technical errors, defects, or exceptions which do not affect the substantial rights of the parties."

in Glasser's petition, pp. 19–24, establish misconduct.[29]

During Glasser's cross-examination, which inquired into a number of cases handled by him while he was an assistant United States attorney, Government counsel offered in open court to permit him to examine the files of certain cases which the prosecutor had in his possession in the court room. Glasser stated that he would like to take advantage of the offer the following day (Saturday), whereupon the court stated that he might have access to the files over the week-end adjournment (R. 979–980). On Monday Glasser informed the court that he had gone to the United States Attorney's office on Saturday morning and had been refused access to the files. The prosecutor replied that the refusal was occasioned by the fact that Glasser was not accompanied by his attorney (R. 982–983). The court stated that "They simply told you to get your lawyer, and you didn't get your lawyer, so the responsibility is not upon them. Show

[29] Kretske cites a number of other instances of alleged improper conduct on the part of the prosecutor. As pointed out in Point VII, *supra*, the propriety of each incident can hardly be determined by reading the selected excerpts which he has taken from the record, without considering their relation to the record as a whole. Some of the incidents were not objected to (R. 289, 636), while in others the objection went merely to the form of the question or was because the ground thereof had already been covered (R. 229, 244, 882). In those instances where objections were overruled, we fail to perceive any error in the trial court's action.

him [Glasser] the reports now," and apparently that was done (R. 983). It seems evident that these facts do not show any unfair refusal to let Glasser inspect pertinent documents.[30]

Exhibit 96, a transcript of testimony before the grand jury in the case of *United States* v. *Louis Kaplan et al.*, presented to the grand jury by Glasser as Assistant United States attorney, was received in evidence by the trial court (R. 529) and the part thereof containing testimony of one Cole was read to the jury by the prosecutor (R. 574). Glasser asserts that this portion of the transcript contained certain immaterial testimony by Cole but not his testimony going to the merits of the case presented to the grand jury. He says that the latter testimony was deliberately suppressed by the prosecutor and must have resulted in causing the petit jury to conclude that Glasser made no effort to obtain incriminating evidence from Cole. Since Exhibit 96 is not included in the record and has not been forwarded to this Court by the petitioners, it is impossible, of course, to appraise the nature

[30] Glasser intimates (Pet. 21) that the Government was responsible for the loss of two exhibits, Nos. 205 and 206, vital to his cause, which were not transmitted to the Circuit Court of Appeals. However, the Government's additional answer (R. 1100–1101) to the petition in that court to require the United States Attorney to produce certain allegedly missing exhibits (R. 1094–1095) states that Nos. 205 and 206 were defense exhibits which were not then in the United States Attorney's possession and never had been. Hence the fact that they were missing hardly supports a contention that it was the fault of the Government.

of Cole's testimony before the grand jury. But there is much in the record to indicate that Cole did not testify concerning the merits of the case under investigation (R. 531, 590, 606, 925). Certainly the record references cited by Glasser (Pet. 22) do not establish the contrary. In any event, there is nothing to sustain Glasser's assertion that the prosecutor deliberately suppressed part of Cole's testimony.

The objection that the propounding of many leading questions established unfairness on the part of the prosecutor is not well founded. Record references of a number of instances are cited on page 23 of Glasser's petition. In some of them no objection was made on the ground that the witness was being led (R. 289, 296, 301, 636), in one of them an objection was sustained (R. 245), and in the others it is clear that the questioning did not overstep the bounds of propriety.

Viewed as a whole, the record convinces that the petitioners' substantial rights were not affected by any of the incidents to which they allude. The court below said (R. 1137) that none of petitioners' complaints warranted a reversal of their convictions.[31]

The record clearly does not support the assertion that Exhibit 92, to the admission of which petitioners' objection was sustained (R. 712), was nevertheless surreptitiously submitted to the

[31] Plainly there was no such type of misconduct on the part of the prosecutor in the instant case as was involved in *Berger* v. *United States*, 295 U. S. 78.

jury by the Government. The assertion rests only upon a recitation in the bill of exceptions that, at the close of petitioners' case, some 35 exhibits, both Government and defense, were received in evidence. These exhibits are listed by number and No. 92 is included (R. 1034). However, the certificate of the Clerk of the trial court as to the exhibits transmitted to the Circuit Court of Appeals does not include or mention Exhibit 92 (R. 1080). We submit that the latter correctly concluded that "From the record thus appearing we are unable to say that [Exhibit 92 was] sent to the jury." (R. 1132.) Moreover, Glasser's petition (p. 24) states that the exhibit was a pre-trial statement of a Government witness, one Raubunas, calculated to corroborate his testimony at the trial. Raubunas testified at length on two occasions (R. 452–527, 713–715), and there is nothing to indicate that the exhibit contained anything beyond what he testified to. In that event, petitioners would hardly have been prejudiced even if the exhibit had reached the jury.

IX

Only two of the petitioners, Glasser and Roth, question the sufficiency of the evidence to have warranted the submission of the question of their guilt to the jury. Glasser's principal contentions are that there is no evidence that he ever received or solicited a bribe, that the prosecution was based entirely on testimony secured and prepared by agents

of the Alcohol Tax Unit, with which Unit he had been at odds, that outside of their testimony the Government's evidence consisted mainly of the testimony of confessed and convicted bootleggers, and that the Government's evidence as to his knowledge and participation in the conspiracy was inadequate (Pet. 4–5; 31–50).

Petitioner Roth, after disagreeing with certain inferences from the evidence made by the Circuit Court of Appeals (Pet. 5–10), contents himself in his argument with the general assertion that the evidence is utterly insufficient and requires a reversal (Pet. 26).

It need only be said that the second count of the indictment upon which petitioners were convicted is not a count for bribery but for a conspiracy to defraud the United States by corruptly influencing the official action of Assistant United States attorneys through the solicitation of payments of moneys from those whose cases would come before such officials. There was consequently no necessity to prove that any bribe was ever received by Glasser although there was ample evidence to confirm the District Court's statement, in sentencing Glasser, that he was satisfied that Glasser accepted money in return for corrupt action (R. 1065).

With respect to the alleged animosity of the Alcohol Tax Unit investigators and the criminal character of many of the Government's witnesses, these considerations merely involve questions of weight and credibility of evidence which,

it is elementary, do not fall within the province of an appellate court. *United States* v. *Manton, supra,* p. 839. Moreover, it may be pointed out in this connection, that the trial judge permitted the defendants to explore these subjects at great length, so that the jury was fully apprised in reaching their verdict of the interest and character of the witnesses in question. (See R. 932–934, 943–948.)

As to the sufficiency of the evidence to show knowledge of and participation in the conspiracy, the absence of direct evidence is, of course, not controlling. As was said by Mr. Justice Sutherland in the *Manton* case (p. 839):

> It is not necessary that the participation of the accused should be shown by direct evidence. The connection may be inferred from such facts and circumstances in evidence as legitimately tend to sustain that inference. Indeed, often if not generally, direct proof of a criminal conspiracy is not available and it will be disclosed only by a development and collocation of circumstances.

In the instant case the Circuit Court of Appeals, after a careful and extensive review of the evidence, followed by a collating of the "noteworthy and expressive circumstances" from which the jury could infer guilty participation of the petitioners in the conspiracy (R. 1129), concluded its discussion of the question by saying that "We have considered this record and are compelled to the conclusion that

the verdict is supported by substantial evidence" [32] (R. 1130).

The conclusion of the Circuit Court of Appeals that there was substantial evidence of petitioners' guilt followed the like conclusion of the District Court and the verdict of the jury. In the light of this unanimity we submit that the petitioners have not made any such showing as would require this Court to reexamine the evidence. Cf. *Delaney* v. *United States*, 263 U. S. 586, 590.

CONCLUSION

Petitioners had a fair trial, their contentions were carefully considered and correctly decided by the Circuit Court of Appeals, and there is involved no conflict of decisions. We therefore respectfully submit that the petitions for writs of certiorari should be denied.

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[32] Since petitioners have not included the trial court's charge to the jury in the record, it must be assumed that that court fully and correctly instructed the jury on the law of conspiracy. See cases cited in footnote 22, *supra*, p. 29.

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